

December 24, 2008

Mr. Mohinder Sandhu, P.E.
Permit Appeals Officer
Department of Toxic Substances
Control
8800 Cal Center Drive
Sacramento, California 95826-3200

ADMINISTRATIVE APPEAL OF DECISION
ON APPROVAL OF FINAL HAZARDOUS
WASTE FACILITY PERMIT RENEWAL FOR
EVERGREEN OIL INC., DAVIS FACILITY,
DAVIS CALIFORNIA 95616

Dear Mr. Sandhu:

This is a petition for review of the October 24, 2008, decision for approval of an operating permit for the Evergreen Oil Inc. hazardous waste management facility in Davis, California.

1. It is noted that DTSC has once again ignored the "...at least 45 days for public comment." The period required by California Code of Regulations, title 22, section 66271.9(b)(1). The public comment period was arbitrarily determined by DTSC to end at 5:00 P.M. The regulations do not require just 44 2/3 days but require **no less** than 45 days. As DTSC so frequently states in its own documents, days are assumed to mean calendar days not business days unless other specified in its regulations. DTSC's public notice has therefore mis-represented the time allowed for public comment. Therefore, all provisions in the final permit are being appealed and none of them should be placed in force until after the decision on this appeal is made. The remedy being sought is re-notice and response to my comments that were submitted within the regulatory 45-day period.

2. Because DTSC refused to respond to public comments made during the legal public comment period, all provisions in the final permit are being appealed and none of them should be placed in force after the decision on this appeal is made.
3. The permit is described as consisting of Attachment A, which is pages long, a standardized permit application, dated December 2006, which is "... hereby made part of this permit by reference." Only "Attachment A" is provided to the public as part of the review documents. This is an inappropriate and deceptive practice on the part of DTSC. Although DTSC touts transparency, it consistently fails to deliver as part of its permitting practice. This permit notice failed to follow DTSC's expressed policies.
4. What regulations distinguish between the Owner of Real Property and the Owner of the Facility? Aren't the Owners, as defined in the regulations, those who own the land and structures of the Facility? Who is responsible for Closure and Corrective Action in the event that Evergreen Oil, Inc. files for bankruptcy---as many DTSC facilities have done? How does this careful and deceptive parsing of ownership description affect all of the regulatory obligations accruing to ownership? Is the Chew Family Trust responsible for Closure and Corrective Action if Evergreen Oil Inc. is bankrupt? The existing regulations do not describe or define "Owner of Real Property" therefore it appears that DTSC is creating an underground regulation to satisfy the Facility and true Owner. Please explain why, DTSC's actions in this permit should not be considered an underground regulation and treated accordingly. The failure to identify the "owners" in regulation-consistent language and to identify their responsibilities as to corrective action is hereby appealed.
5. The Permit does not explain the difference between Operation Plan and Permit Application. DTSC appears to use the terms interchangeably without any regulatory definition for the term Operation Plan. The regulations do not provide for the creation of terms of art. The use of this term in

an operative fashion is hereby appealed.

6. I hereby appeal the Corrective Action section of the Permit because California Code of Regulations, title 22, requires that corrective action be specified in the permit. No schedule of compliance provided in the draft permit and there is no evidence that any form of corrective action mechanism, such as a Corrective Consent Agreement, exists. DTSC is clearly not satisfying the corrective requirements in the applicable statutes and regulations for issuance of this permit.
7. I hereby appeal the Corrective Action section of the Permit because the AFR for corrective action is required by statute to be included in permits issued by DTSC. Why isn't this addressed? Why isn't the AFR for corrective action addressed in the corrective section of the permit? By its silence on corrective action AFR, it is believed that this permit is inconsistent with and contradictory to the intent of H&SC §25200.10(b). This section of the H&SC requires that, ***When corrective action cannot be completed prior to issuance of the permit, the permit shall contain schedules of compliance for corrective action and assurances of financial responsibility for completing the corrective action.*** [H&SC §25200.10(b)] Title 22 states ***That the permit or order [emphasis added] will contain schedules of compliance for such corrective action (where such corrective action cannot be completed prior to issuance of the permit) and assurances of financial responsibility for completing such corrective action.*** [Title 22 CCR §66264.101(b)] In perusing the consent agreement, it is clear that DTSC has not completely addressed corrective action, since it only finished the RCRA Facility Assessment (RFA) in May 2004, [for a facility that had operated over 20 years] just before issuance of the draft permit but has failed to require corrective action AFR in the permit. Moreover, there appears to be no schedule of compliance for completion of corrective action in the permit proper. Note, that no reference is made in the Permit as to whether DTSC has determined that corrective action is complete---either through conclusions of an RFA, investigative work under an

RFI, or through implementation of a remedy selected. DTSC is attempting to end run its obligation to make a clear administrative decision----subject to public comment and CEQA---on the issue of corrective action.

8. I petition that the corrective action section of the Permit is re-written to be specific as to what constitutes the "Facility" for purposes of corrective action. Specifically, despite Evergreen only using a fraction of the involved parcel, corrective action needs to be applicable across all of the property, not just that portion carved out for use by Evergreen.
9. I petition that Section III.3 be revised. DTSC claims that its decision is exempt from the requirements of CEQA. This section of the Permit is inaccurate. DTSC has failed to provide for corrective action financial assurance and hence there are substantial potential environmental impacts. Delay or permanent inability to perform corrective action activities is clearly a significant environmental impact.
10. I petition that specific construction standards for the secondary containment be included as permit conditions in Section IV. Use of a bucket or drip pan is not a substitute for the regulatory requirement for secondary containment.
11. I petition that a special condition be added to Section IV of the Permit to require that Unit #3 be fenced as required by the regulations to control the unit and that conditions be added as to removal of wastes from the sump.
12. I petition that a condition be added to Section IV that requires any tanker awaiting unloading to be within a fenced area as well as a condition to acknowledge that if the tanker is placed in Unit #3, that that placement constitutes acceptance of the waste.
13. I petition that a condition be added to Section IV to explain specifically how intentional mixing

will be recognized.

14. I petition that Section IV be modified to eliminate the exemption for testing for PCBs. The existing condition "legalizes" dilution of PCB containing loads with non-PCB containing truckloads.
15. I petition that a condition be added to Section IV to specify the repairs necessary to maintain the secondary containment. Specifically, something more secure than a simple bead of calk or an even thinner coating must be provided to address any through-going cracks. DTSC must address how such cracks will be recognized and how they will be fixed.

I petition that this permit be re-noticed and all comments received during a true 45-day comment period be responded to. I further petition that the permittee required to have in place corrective action AFR and include a compliance schedule in the permit before its re-issuance.

If you have questions regarding the foregoing comments please call me at (310) 455-1962.

Sincerely,

Philip Chandler
2615 Marquette
Topanga, CA 90290